IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1743 OF 2006

Smt.Shivubai Pandurang Thakur
(Deceased through his legal
heirs and Ors.) ....Petitioners

Versus

Shri Ramdas Shimgya Bhoir
and Ors. ....Respondents

Vijay Gharat, Adv. for the petitioners.

CORAM: S.C.DHARMADHIKARI, J.

21.11.2007

P.C. :

1. The petitioners landlords are aggrieved by their objections being rejected during the course of execution of a decree passed againts them and in favour of the respondents.

2. The respondents suit was for a declaration that they are tenants in respect of one room admeasuring 15x10 and House No.855 and the petitioners defendants must hand over possession of the said room to them.

3. During the course of execution, the landlord raised an objection stating that physical possession of the room cannot be given as the same is already demolished. That objection was considered but the executing court held that the execution can still proceed. It is true that the decree is for declaration and for possession. The tenancy rights are qua the suit premises. The suit property is a room admeasuring 15x10, that is, how the property is described in para 1 of the plaint. However, the plaint does not state in para 1 specifically that the room is the subject matter of the suit. My attention is invited to the decree passed by the Trial Court which declares that the respondents are tenants with regard to a room on the western portion admeasuring 15x10. The executing court was therefore right in holding that the execution cannot be defeated on the grounds raised by the present petitioners. It is for

the decree holder to take necessary steps. That is what is directed. Now the decree holder is to take the requisite steps after the executing court has noted that the room was demolished.

4. In such circumstances, I see no prejudice to the petitioners who could always point out to the executing court that in so far as physical possession of the room is concerned, that cannot be handed over on account of the same being demolished and not in existence. That aspect has been duly noted by the executing court as well. It is for the decree holder to take such decision with regard to enforcement of the decree in his favour as directed by the executing court. There is no warrant for interference with the order of the executing court. Petition is accordingly dismissed.

(S.C.DHARMADHIKARI, J)